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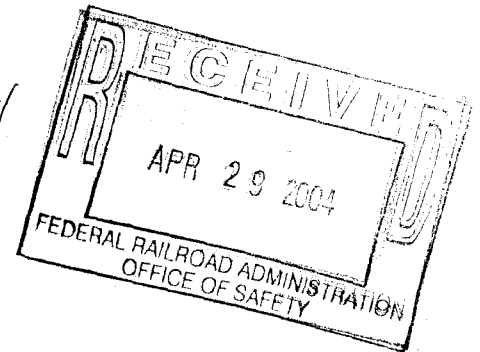
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April 16, 2004

FRA-2004-17989-1



Grady C. Cothen, Jr.
Deputy Associate Administrator for Safety
Federal Railroad Administration
1120 Vermont Av. NW
Washington, DC 20590

Dear Sir:

Re: Request for Waiver from 49 CFR Part 218, Subpart B – Blue Signal Protection

Pursuant to 49 CFR Part 211, Canadian Pacific Railway Company (CPR), on behalf of our Soo Line and Delaware & Hudson subsidiaries, hereby requests a waiver from Part 218, Subpart B, for the express purpose of permitting train, yard and utility employees to remove and replace batteries in end-of- train (EOT) devices while installed on rail equipment.

It would appear to CPR that the practice of changing out batteries on EOT devices already attached to trains by those employees assigned to operate those trains is a common practice in the industry. Having observed that fact, we have recently been challenged by some local FRA inspectors to either obtain a waiver from Part 218 or terminate that practice. We also note that BNSF and others have successfully obtained FRA waivers for the same purpose (docket # 10660).

The definitions contained in Part 218.5 provide that members of train and yard crews, and properly assigned utility employees, are excluded from the term "worker" when working on the train they are assigned to. Blue flag protection is not required by Part 218.22(c)(5) for these employees while inspecting, testing, installing, removing or replacing an EOT device. That section is silent on the matter of changing batteries.

It is CPR's position, supported by the BNSF waiver petition, that changing EOT batteries *in situ* requires less time, places the employee in less immediate danger, and creates less physical strain than removing and replacing the entire EOT.

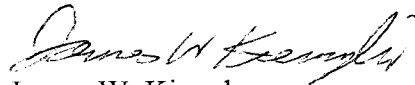
While the US&S EOT devices used by CPR are nearly the same weight as those used by BNSF, we use NiCad batteries, which are physically smaller and lighter than the lead-acid gel batteries used by BNSF. This further reduces the risk to employees from those processes described in the BNSF petition. CPR recently began using air powered (ATX) EOT devices, which require no battery replacements, but these remain a small percentage of the total devices in service.

CPR wants to make it clear to the FRA that this waiver request is intended to cover only train and yard employees working on other their own assigned equipment and properly assigned transportation utility employees. It is not intended to cover mechanical or other employees who clearly require blue flag protection to work in or under equipment

The apparent failure of the RSAC blue flag working group to come to any consensus on related amendments to Part 218 leaves CPR with no option other than to advance this request for a waiver.

Your immediate consideration is respectfully requested.

Sincerely,



James W. Kienzler
Director, Regulatory Affairs

cc: George Gavalla, FRA
Larry Kissell, CPR
Rod McCorkle, CPR
Serdar Bilgin, CPR